

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

NEFTALI SANCHEZ-SERRANO,

Defendant.

CASE NO. 8:05CR205

MEMORANDUM AND ORDER

This matter is before the Court on a Report and Recommendation (Filing No. 25) of a Magistrate Judge recommending that I accept the Defendant's plea of guilty. There are no objections to the Report and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 11.2(d), the Court has conducted a de novo review of the record.

Throughout this case, the record reflects that the parties have assumed that the statutory penalty for a violation of 18 U.S.C. § 472 includes not more than 15 years imprisonment and up to 5 years supervised release. (Filing Nos. 2, 11, 22, 24, 26.) The Court also advised the Defendant accordingly at the change of plea hearing. (Filing No. 26.) However, the statute indicates that the penalty includes up to 20 years imprisonment. Moreover, the applicable term of supervised release is “not more than 3 years,” as opposed to “up to 5 years” as indicated in the plea agreement. 18 U.S.C. §§ 3559(a)(3); 3583(b)(2).

Because the Court is unable to conclude that the Defendant's plea was knowing, intelligent and voluntary, this matter will be overruled and remanded to the Magistrate Judge for further proceedings.

IT IS ORDERED:

1. The Report and Recommendation (Filing No. 25) is overruled;

2. The plea and the plea agreement are not accepted at this time;
3. This case is remanded to the Magistrate Judge for further proceedings.

DATED this 12th day of September, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge